IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 686, 9598,
9599 and 9600 of 1994

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT KHET KAMDAR UNION

Versus

THE STATE OF GUJARAT & OTHERS

Appearance:

1. Special Civil Application No. 686 of 1994

MR H.M.MEHTA SR.COUNSEL FOR KETAN A DAVE for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MR SB VAKIL for Respondent No. 2

MR AJ PATEL for Respondent No. 3, 4, 5, 6, 7

2. Special Civil ApplicationNo 9598 of 1994
GOVERNMENT PLEADER for Petitioner
MR AS VAKIL for Respondent No. 1
MR SB VAKIL for Respondent No. 2
MR AJ PATEL for Respondent No. 3, 4, 5, 6, 7

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH
Date of decision: /12/98

C.A.V.JUDGEMENT (Per Shah, J.)

These petitions under Article 226 of the Constitution are directed against the common judgment and order dated 13-4-1992 of the Gujarat Revenue Tribunal, Ahmedabad (hereinafter referred to as "the Tribunal") in Revision Application nos.45,46 and 47 of 1989 under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

2. Special Civil Application No.686 of 1994 is filed as a public interest petition by the Gujarat Khet Kamdar Union challenging the interpretation placed by the Tribunal on certain provisions of the Act which had a bearing on the prohibition against the absentee landlords and for a writ of mandamus to direct the State Government to take appropriate action under Section 84C of the Act against the absentee landlords and to take possession of such lands and to distribute the same to the landless labourers. The petitioner - union claims to represent agricultural labourers, most of whom are landless, including small and marginal farmers, who on account of small size of holding have to toil as labourers elsewhere. The petitioner - union also claims to be working for the protection of socio-economic rights of the agricultural labourers in Gujarat including allotment of surplus land to the landless labourers. The Union has, therefore, taken up the cause of implementation of the legislation for agrarian reforms.

Special Civil Applications Nos. 9598, 9599 and 9600 of 1994 are filed by the State of Gujarat against the aforesaid common judgment and order of the Tribunal in the three respective revision applications.

3. Since all these petitions are directed against the common judgment and order of the Tribunal and raise identical contentions, at the request of the learned

counsel for the parties, the petitions have been heard together and are being disposed of by this common judgment.

4. The facts leading to filing of these petitions, briefly stated, are as under :-

Respondents nos. 2 to 5 (hereinafter referred to as the purchasers) purchased certain agricultural lands of various survey numbers, in all admeasuring 34 acres 35 gunthas, in village Sughad, taluka Gandhinagar, by three different sale deeds dated 17-7-1981 executed by respondents 6 and 7. The relevant mutation entries in village revenue record were posted by the Talati-cum-mantri of the village in August/September 1981 and all the said entries were certified on 20-10-1981. The Mamlatdar & Agricultural Land Tribunal (hereinafter referred to as the ALT) initiated proceedings under Section 84C of the Act by issuing three separate notices dated 1-1-1983 in Tenancy Case Nos. 2815, 2834 and 2835 of 1982 respectively and passed orders dated 16-10-1984 holding that the transfers were invalid on the ground that the purchasers, though having agricultural lands prior to the date of the aforesaid transactions of 17-7-1981, were not agriculturists within the meaning of Section 2(2) read with Sec. 2(6) of the Act, as the agricultural lands held by them prior to the impugned transactions were in Bharuch District and were at a distance of more than 5 miles from the agricultural lands purchased under the impugned transactions. The Mamlatdar & ALT accordingly ordered forfeiture of the lands unless the parties restored the lands to their original position within a period of 90 days.

Appeal Nos. 260, 261 and 262 filed by the purchasers were dismissed by the Deputy Collector by his common order dated 5-11-1988. The purchasers, therefore, carried the matter further and filed the above numbered revision applications before the Tribunal. After hearing the parties, the Tribunal by its common judgment and order dated 13-4-1992 allowed the Revision Applications and set aside the aforesaid orders of the Mamlatdar & ALT as well as the common order of the Deputy Collector as unlawful and unjust and the proceedings were ordered to be closed. The present group of petitions is filed against the aforesaid common judgment and order of the Tribunal.

5. The broad facts narrated hereinabove are not at all in dispute and, therefore, this Court has thought it fit not to cluster the judgment with details about the

survey numbers and exact areas of different survey numbers purchased under the three different sale-deeds of the same date and so also the details about the mutation entries. In fact, the learned Counsel for the petitioners i.e. Gujarat Khet Kamdar Union and the learned Government Pleader for the State Government have made it clear that what has grieved the petitioner-Union as well as the State Government is not mere setting aside of the orders of the Mamlatdar and the Deputy Collector in relation to the three transactions in question as such but the general approach of the Tribunal towards the problem of the implementation of the legislation for agrarian reforms and the principles expounded by the Tribunal are being followed by the Tribunal as well settled and are also being required to be followed by the Mamlatdars & ALT and the Deputy Collectors discharging their administrative and quasi-judicial functions under the Act.

6. The learned Counsel for the petitioners have, therefore,, raised the following contentions at the time of hearing of these petitions :-

(1) The Tribunal has committed an error of law apparent on the face of the record in holding that initiation of the suo motu proceedings under Section 84C of the Act by the Mamlatdar & ALT on 1-1-1993 was after an unreasonable long period, even though as a matter of fact the proceedings were initiated after a period of merely one year and two or three months from the date of certification of the entries by the revenue authority. The one year test laid down by the Tribunal as a cast iron formula of limitation militates against the statutory provisions of Section 84C of the Act which do not provide for any period of limitation and, therefore, a pronouncement from this Court is necessary to remove the misconception.

(2). The provisions of Sections 2(2), 2(6), 63 and 84C as applicable at the relevant time could not have been whittled down by the Tribunal on the basis of the Government Resolution dated 29-4-1980 as the said Government Resolution did not purport to do away with the restriction imposed by Section 2(6) of the Act that the purchaser must be having another agricultural land within a radius of 5 miles (8 Kms.) from the agricultural land intended to be purchased. Even otherwise the Resolution was issued in a different context

altogether and merely provided that the purchaser must have his existing agricultural holding in the State of Gujarat and not in another State.

(3). The Tribunal ought to have appreciated that the wrong interpretation placed on the Government Resolution dated 29-4-1980 was already clarified by the Government itself by issuance of a subsequent resolution dated 20-5-1982 and that apart the Tribunal erred in holding that the Government was bound by Circulars even when such circulars were ultra vires the Act.

7. On the other hand, learned Counsel Mr.S.B. Vakil for respondent no.2 and Mr.A.J.Patel for respondents nos. 3,4 and 5 i.e. purchasers of the lands in question, contested the petitions and made the following broad submissions:

(1). Initiation of proceedings by the Mamlatdar & ALT under Section 84-C of the Act was beyond reasonable period. In the first place the proceedings were initiated after about 16 months and secondly, the purchasers had made heavy investments after purchase of the land and certification of the entries on the one hand and prior to the initiation of the proceedings on the other hand. Strong reliance is placed on the various decisions of the Apex Court and this Court and particularly on the decisions of the Apex Court in Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim, (1997) 6 SCC 71 and in Dajibhai Kanjibhai Tandal Vs. The Mamlatdar & Agricultural Lands Tribunal, Pardi & anr. Civil Appeal No. 4917 of 1984 decided on 27-8-1996.

(2). The provision pertaining to the restriction of five miles for the purpose of valid purchase of agricultural lands occurring in Section 2(6) of the Act has been deleted by Gujarat Act No.4 of 1995 on the ground that continuation of the restriction of 5 miles (8 kms.) distance is not only anachronistic and causing irritation to the Farmers, but is also hindrance to the development of occupation of agriculture and also in order to bring about uniformity of laws in the entire State. The said deletion has retroactive operation and therefore, at the time of deciding the present group of petitions, the Court is required to look at the provisions after the said

deletion.

(3). Even prior to the deletion of the aforesaid provision by Gujarat Act No.4 of 1995, the prohibition in respect of radius of 5 miles (8 kms.) applied only to those persons who cultivated the land through their supervisors and therefore, the judgment rendered by a learned Single Judge of this Court in the case of Devji Meghji Gangar vs. Lalmiya Mosammiya, 18 GLR 515 does not lay down correct law and the correct law was laid down in the decision of the Bombay High Court in Abdul Karim v. Laxman Bapu, AIR 1981 Bombay 168.

(4) The present four petitions filed before this Court are also barred by delay, laches and acquiescence, -

(i) After the judgment of the Tribunal in April 1992 the consequential mutation entries were also made in the revenue record in August 1992 and thus the State Government had acquiesced in the judgment. On the basis of such Entry No.3093 dated 10-8-1992 indicating acquiescence of the State Government, the purchasers had purchased other agricultural lands also. It was, therefore, not open to the State Government to challenge the judgment of the Tribunal.

(ii) Even though the judgment of the Tribunal was delivered on 13-4-1992, Special Civil Application No.686 of 1993 was filed in October 1993 and moved for admission in January 1994. The State Government filed petitions on 27-7-1994 i.e. nearly two years and three months from the date of judgment of the Tribunal. Apart from the unexplained delay in filing the petitions, this Court may decline to interfere, as the purchasers had not only purchased other agricultural lands within 5 mile radius of the lands in question but had also made heavy investments in the lands in question in the intervening period-running into Rs.1.25 Crores.

7A. Mr AS Vakil for respondent Nos. 6 and 7 (original vendors) supported the purchasers and stated that if required, the original vendors were prepared to execute fresh sale deeds in favour of respondent Nos. 2 to 5, as the 5 mile restriction is no longer in force

now.

8. In order to appreciate the rival submissions it is necessary to set out the relevant provisions of the Act. The Act is applicable only to the Bombay area of the State of Gujarat. Section 2(2) defines "agriculturist" as under:

> 2(2) "agriculturist" means a person who cultivates land personally;

Section 2(5) of the Act defines "to cultivate" as under:

> 2(5) "to cultivate" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression " uncultivate" shall be construed correspondingly.
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> Explanation: A person who takes up a contract to cut grass or together the fruits or other produce of trees on any land, shall not on that account only be deemed to cultivate such land;

Section 2(6) defines the phrase " to cultivate personally" as under:

> 2(6). "to cultivate personally " means to cultivate land on one's own account-
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> (i) by one's own labour, or
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> (ii) by the labour of any member of one's family, or
>
> (iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share,

being land, the entire area of which -

(a) is situate within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by distance of more than five miles, or

(c) forms one compact block."

Section 2(8) defines "land" as under:

2(8) "land" means -

(a) land which is used for agricultural purposes or which is so used but is left fallow and includes the sites of farm buildings appurtenant to such land; and

(b) ....."

Section 63(1) of the Act provides that save as provided in this Act, no sale, gift, exchange or lease of any land or interest therein, no possessory mortgage, nor any agreement in writing for sale (etc.) of any land or interest therein -

"shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer.

Provided that the Collector or an officer authorized by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, or for such agreement on such conditions as may be prescribed:

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees."

Section 84C, in so far as the same is relevant for the present purposes, reads as under:

84C(1). Where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955 the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84 B and decide whether the transfer or acquisition is or is not invalid.

(2). If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land alongwith the rights and interest therein to the position in which it was immediately before the transfer or acquisition and the land is so restored within that period:

Provided that .....

(3). On the declaration made by the Mamlatdar under sub-section (2) -

(a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully, subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub-section (4); .....

(b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrears of land revenue; and

(c). the Mamlatdar shall, in accordance with the provisions of Section 63-A determine the reasonable price of the land.

(4). ...."

Sub-section (4) of Section 84C provides that the land which vests in the State Government under sub-section (3) shall be granted by the Collector as new and impartible tenure on payment of occupancy price in the following order of priority:

(i). the tenant in actual possession of the land;

(ii). the persons or bodies in the order given in the priority list:

CONTROVERSY ABOUT THE PERIOD DURING WHICH THE PROCEEDINGS UNDER SECTION 84C OF THE ACT MAY BE INITIATED:

9. The learned Counsel for all the parties have addressed the Court at length on this particular question as the Tribunal has categorically held that initiation of the proceedings by the Mamlatdar & ALT under Section 84C of the Act was beyond reasonable time as explained in the various decisions of the Apex Court and this Court. There is no dispute that the Statute itself does not stipulate any time limit for initiation of the proceedings under Section 84C of the Act. The learned counsel for the parties also agree that in view of the absence of any such statutory period of limitation the initiation of proceedings under Section 84 C of the Act has to be done within reasonable period. The real controversy is the scope of the expression "reasonable period" and whether the Tribunal had committed any error of law apparent on the face of the record in holding that initiation of the proceedings under section 84C of the Act after one year from the date of purchase of the lands in question would ipso facto render the proceedings null and void ab initio. Since that was the contention urged by the purchasers before the Tribunal and the same had commended to the Tribunal, we will first take up the arguments advanced by the learned Counsel for the purchasers in support of the said contention.

10. Mr.Vakil and Mr.Patel for the purchasers submitted that since the principle that reasonable exercise of power inheres the principle that statutory power must be exercised within reasonable time, even if

the concerned statutory provision itself does not provide for any period of limitation for exercise of such power, the Court must look at the other relevant provisions of the same Act to find out the legislative intent as to what period the legislature considered to be reasonable for the purpose of initiation of the proceedings. In support of the said proposition the learned Counsel relied on the decisions of the Supreme Court in State of Gujarat vs. Raghav Natha, AIR 1969 SC 1297 = 10 GLR 992. That was a case under Section 211 of the Bombay Land Revenue Code. Under Section 65 of the Code, the authority had granted permission to make nonagricultural use of the agricultural land on 2-7-1960. Thereafter, on 12-10-1961 the Commissioner in exercise of revisional power under Sec. 211 of the Code set aside the order dated 2-7-1960. While negativing the contention of the authority that in absence of any period of limitation for exercise of the powers under Section 211 of the Bombay Land Revenue Code, the power could be exercised at any time, Their Lordships of the Supreme Court made the following observations:

"12. The question arises whether the Commissioner can revise an order made under sec. 65 at any time. It is true that there is no period of limitation prescribed under Sec. 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

13. It seems to us that sec. 65 itself indicates the length of the reasonable time within which the Commissioner act under Sec. 211. Under sec. 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading secs. 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is

likely to spend money on starting building operations atleast within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

The learned Counsel for the purchasers have placed heavy reliance on the aforesaid observations and submitted that Section 76A conferring revisional power on the Collector gives a clue to the legislative intent :-

76A. Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government at any time -

(a) call for the record of any inquiry or the proceeding of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

It is, therefore, submitted that when the legislature has provided for the aforesaid time limit of one year for exercising revisional powers under Section 76A of the Act by the Collector in respect of an inquiry by or order of the Mamlatdar, there is no reason why the same time limit may not be applied for initiation of the proceedings under Section 84C of the Act when the purpose of initiating the proceedings is the same - whether under Section 76A or under Sec.84C of the Act. The learned Counsel for the petitioners have further relied on the decision of the Apex Court in Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim, 1997 (6) SCC 71 approving the decision of this Court in State of Gujarat vs. Jethmal Bhagwandas (SCA No. 2770 of 1979 decided on 1-3-1990) and also on the decisions of this Court in Maniben Oriabhan vs. State of Gujarat (SCA No. 2835 of 1997

decided on 14-10-1998), 1994(1) GLH 20 and 1998 (2) GLH 556.

11. On the other hand, Mr.H.M.Mehta learned Counsel for the petitioner-Union and Mr.P.G.Desai, learned Government Pleader have submitted that when the same Legislature enacting the same Act, while providing limitation period of one year for initiation of the revisional proceedings under section 76A of the Act, did not provide for any time limit for initiation of the proceedings under Section 84C of the Act - the clear legislative intent is not to provide for any specific period of limitation and therefore, such clear legislative intent cannot be defeated by reading into Section 84 C of the Act limitation period stipulated in another provision of the Act.

It is also submitted that Section 84C of the Act is one of the pillars of the Act which is a legislation for agrarian reform and which sought to do away with the system of absentee landlords. Any transfer or acquisition of the agricultural land in violation of any provision of the Act (including Section 63 of the Act) is invalid and therefore, when the legislature itself has not fettered the power of the Mamlatdar for declaring such transfer or acquisition invalid by imposing any period of limitation, the Tribunal or the Court cannot take away such statutory power by imposing any cast iron period of limitation.

It is further submitted that in any view of the matter the case of Raghav Natha was concerned with the powers of the authority under the Bombay Land Revenue Code which was not a piece of legislation for agrarian reform but an Act concerned with the assessment and collection of land revenue. Hence, the observations made in the said decision would not be applicable while deciding the present controversy.

12. Having heard the learned Counsel for the parties we are of the view that there is considerable force in the submissions made on behalf of the petitioner - Union as well as the State Government. As per the settled legal position, when the statute does not provide for any period of limitation for exercising a particular power, such power must be exercised within a reasonable period, subject to the exception that such a plea is not available to a person who is himself guilty of fraud or who has suppressed material facts, but it is equally well settled that what is reasonable period during which a

particular statutory power is to be exercised would depend on the facts and circumstances of each case and also on the nature of the order to be passed.

In the case of Raghava Natha (supra) the Supreme Court was concerned with the delay in exercise of the power under Section 211 of the Bombay Land Revenue Code where permission for non-agricultural use granted under Section 65 of the Code earlier was sought to be cancelled after 1 year and 3 months. It was in that context that the Supreme Court referred to the provisions of Section 65 of the Code providing that if the application for non-agricultural use is not granted or refused within a period of 90 days from the date of presenting the application, the application shall be deemed to have been granted upon expiry of the 90 days period. The Supreme Court, therefore, observed that if the legislature considered grant of N.A.permission as a matter of such urgency and importance that failure on the part of the authority to decide the application for N.A.permission within 90 days would result into automatic grant of N.A.Permission, the authority was not expected to initiate proceedings for cancellation of N.A.Permission already granted, after a few months from the date of the grant or deemed grant of the application. Hence exercise of revisional power under Section 211 of the Bombay Land Revenue Code after a period of 1 year and 3 months was held to be beyond reasonable time. It is, therefore, not possible to accept the contention urged on behalf of the purchasers that the period of limitation stipulated in Section 76A of the Act should be taken into consideration for the purpose of explaining the scope and ambit of "reasonable period" within which the proceedings under Section 84C of the Act must be initiated to avoid the risk of being set aside on the ground of delay.

It is pertinent to note that Section 76A of the Act merely confers revisional power on the Collector in respect of any inquiry or proceedings before the Mamlatdar or ALT and it does not confer any power upon the Collector for initiating any proceedings for invalidating any sale or transfer of the agricultural land. Such power is conferred on the Mamlatdar under Section 84C of the Act. Hence the scope of the power and inquiry under Section 76A of the Act is not the same as the scope of power and inquiry under Section 84C of the Act.

In this connection it is also necessary to refer to the following observations made by this Court speaking through Hon'ble Mr.Justice S.B.Majmudar (as His Lordship

then was) in the judgment dated 1-3-1990 in Special Civil Application No. 2770 of 1979 and other cognate petitions which were all concerned with the same question about exercise of power under Section 84C of the Act within reasonable period:

> ".....the Tribunal further observed in the same para, that it would be too late in the day for the Mamlatdar to take action under Section 84C after more than one year from the date of the sale transactions having come to the notice of the Revenue Officer and therefore, it was time barred. However, these observations cannot mean that there is fixed period of limitation of one year. It cannot be disputed that no such fixed period of limitation is prescribed by the Legislature for Mamlatdar to exercise suo motu power or otherwise under section 84C. Therefore, the latter observation of the Tribunal in para 6 will have to be read in light of the facts of the case. When so read, it would only mean that initiation of proceedings on the facts of the present case after more than one year from the date of transaction is found to be an unreasonable exercise. Now, so far as this aspect is concerned, it is well settled that even when no period is fixed for any action, action cannot be taken at any time at the sweet will of the authority but it should be taken within reasonable time and what is reasonable time is always a question of fact... "
>
> (emphasis supplied)

It is unfortunate that inspite of enunciation of the aforesaid principle in no uncertain terms that there is no fixed period of limitation of one year and inspite of the fact that the aforesaid judgment of this Court in Special Civil Application No.2770 of 1979 was referred to by the Tribunal, the Tribunal committed an error of law apparent on the face of the record by applying a wrong test that initiation of proceedings under Section 84C of the Act beyond one year per se would be illegal or unreasonable.

13. The Tribunal further committed an error apparent on the face of the record in holding that for considering the reasonableness or otherwise of the period, the date of registration of the sale deed is the relevant date

because once the mutation entry made in the revenue record is certified, certification of the entry relates back to the registration of the sale deed.

Looking to the object underlying the provisions of Section 84C of the Act it has to be held that the date of registration of the sale deed cannot be treated as the relevant date for computing the reasonable period. Merely because the registering authority like the Sub-Registrar is also an Officer of the State Government, the authority appointed by the State Government for implementing the provisions of the Tenancy Act cannot be imputed with knowledge of an illegal or irregular transaction upon presentation of the document embodying such a transaction before an officer who is merely entrusted with the duty of entering a transaction in the public record. The mutation entries made upon application being made by seller or purchaser of the land in question are to be certified by a revenue officer of the State Government like Deputy Mamlatdar or Mamlatdar. So also mere making of mutation entry in the village revenue record would not be the starting period, as the Talati-cum-Mantri making such an entry is a village level officer of the local authority (Gram Panchayat) which is not entrusted with the responsibility of implementation of the provisions of the Tenancy Act. Different considerations would, however, arise when mutation entry made upon application being made by seller and/or purchaser of the land in question is certified by a revenue Officer of the State Government. It is therefore, only upon certification of the mutation entry (which is generally done by a Deputy Mamlatdar or a higher officer as stated at the hearing of the petition) that the concerned Government Department can be said to have been posted about the knowledge of such transaction.

Even here, contends the learned Government Pleader, certification of an entry in the revenue record is merely for the purpose of collection of land revenue and therefore, the Mamlatdar vested with the power to initiate proceedings under Section 84C of the Act cannot be treated as having been posted with the knowledge of transaction in violation of the provisions of Section 63 of the Act.

We are, however, not prepared to go that far and we are of the view that while considering the reasonableness or otherwise of the period (after which initiation of the proceedings under Section 84C of the Act may be held to be invalid) such period can be considered as having commenced from the date of

certification of the mutation entry in the revenue record in village form No.6 which records the entries relating to the change of ownership of agricultural lands. While there cannot be any hard and fast rule or cast iron formula so far as the second terminus of the reasonable period is concerned, it would not be unreasonable to expect that the citizens should know with some certainty as to what is the first terminus of this reasonable period.

We may hasten to add that as per the qualification made in the case of State of Orissa Vs. Brundavan Sharma, (1995) 3 Supp. SCC 249 and explained by this Court in Jiviben Kalaji vs. State of Gujarat, 1998(2) GLH 556, the defence that exercise of a statutory power beyond reasonable period must be held to be illegal, is not available to a person who himself is guilty of fraud or suppression of material facts in respect of a matter which is relevant to the certification of the entry.

THE TEST TO BE APPLIED

14. In view of the above discussion, we hold that there is no fixed period of limitation for exercise of power under Section 84C of the Act and that the observations to the contrary in the impugned judgment of the Tribunal (as if there is a fixed period of one year beyond which the power under section 84C of the Act cannot be exercised) are set aside and it is held that the question whether the proceedings under section 84C of the Act were initiated within reasonable time is a question to be considered on the facts and circumstances of each case.

15. Having said so, we cannot help observing that a person purchasing a property, whether agricultural land or otherwise, need not be kept in suspense about the legality of the transaction in question for all time to come. Even the observations of this Court in the case of State vs. Jethmal Bhagwandas (Supra) and in the case of Maniben Oriabhan (Supra) and in Mavji Dhorji vs. State of Gujarat, 1994 (1) GLH 20 would indicate that though there is no fixed period of limitation of one year, the period of one year may be treated as a yardstick for the purpose of testing any contention about delay in initiation of proceedings under section 84C of the Act. Hence, if the authorities initiate proceedings under section 84C of the Act within one year from the date of certification of the entry in the revenue record, but in the meantime the purchaser has changed his position by

constructing property on the land in question or by investing substantial amounts, it would be for the purchaser to contend and show that initiation of proceedings was after unreasonable delay. In short, in case of initiation of proceedings within one year, the onus will be on the purchaser to show why the time taken in initiation of proceedings be treated as unreasonable. On the other hand, if the proceedings under section 84C of the Act are initiated after a period of one year from the date of certification of the entry, the onus will be on the authority to show why the time taken for initiation of the proceedings should not be considered to be unreasonable and it would be for the authority to justify its belated action. Here also the purchaser will be at liberty to show any prejudice that might be caused to him by overlooking delay, unless the authority can show fraud or suppression of material facts as indicated above. It appears that this would be a reasonable way of striking balance between the two conflicting claims - one of permitting authority exercising jurisdiction vested in it under section 84C of the Act to initiate proceedings for invalidating an action contrary to the Act, without any fetter of period of limitation prescribed under the Act; and second of the right of a purchaser to deal with a property with the legitimate expectation that the statutory authority would not exercise its powers under section 84C of the Act beyond reasonable period. The Court has merely attempted to evolve a workable formula for resolving this conflict.

WAS THERE UNREASONABLE DELAY IN INITIATION OF PROCEEDINGS ?

16. The question would still remain whether, in the facts and circumstances of the present three cases, the Tribunal was justified in holding that the initiation of proceedings by Mamlatdar under Section 84C of the Act was beyond reasonable period. Since the Tribunal had not applied the correct test, the matter might have been required to be remanded to the Tribunal to enable the Mamlatdar to explain the delay. In order to obviate such a course of action, the purchasers have relied on their Affidavit-in-reply dated 11-2-1994 and 7-4-1997 pointing out that as mentioned in para 8 of the judgment of the Tribunal, after purchase of the lands in question in July 1981 and before the initiation of the proceedings by the Mamlatdar on 1-1-1983 the purchasers had invested a huge amount for improvement of the lands in question. The purchasers had invested an amount of Rs.16,00,000/- for purchasing the lands in question and thereafter they had

also purchased another parcel of land on 30-8-1982 for an amount of Rs.1,20,000/-. The purchasers had also invested huge amount for the improvement of the lands before initiation of the proceedings in 1983 . The particulars of the expenses said to have been incurred by way of improvement of the lands are given in Annexure AIII to the reply affidavit (page 107). However, the first column in the said statement covers the period from 1-4-1980 to 31-3-1982 and therefore, it is not possible to find out the extent of expenditure incurred by the purchasers between the date of certification of the entries in September/October 1981 and 1-1-1983 when proceedings under section 84C of the Act were initiated. It is therefore, not possible to hold that the initiation of the proceedings under section 84C of the Act on 1-1-1983 was beyond reasonable time.

EFFECT OF GOVERNMENT RESOLUTION DATED 29-9-1980

17. As far as the effect of the Government resolution dated 29-4-1980 is concerned, we are clearly of the view that the said Government Resolution was not intended to set at naught the judgment of this Court in Devji Meghaji vs. Lalmiya, 18 GLR 515 because it was clearly held in the said judgment that a person intending to purchase agricultural land must have another agricultural land within radius of 5 miles (8 kms.) from the land intended to be purchased. The said resolution was issued only for the limited purpose of clarifying that the existing holding as well as the land intended to be purchased were both required to be situate in the State of Gujarat. In other words the Resolution was intended to deal with a situation where a person in a District on an inter-State border intends to purchase land within the State of Gujarat on the strength of his agricultural holding which is within five miles from the land proposed to be purchased but is outside the State of Gujarat. In this view of the matter, we are of the view that the Tribunal committed an error apparent on the face of the record in relying upon the Government Resolution dated 29-4-1990 for the purpose of holding that on the strength of the said Resolution a person having agricultural land anywhere in the State of Gujarat could purchase another agricultural land in the State without restriction of distance of 5 miles (8 kms.). In view of the aforesaid clear interpretation of the Resolution, the other connected submissions made by the learned counsel for the petitioners are not required to be considered.

WAS DEVJI MAGHAJI'S CASE NOT CORRECTLY DECIDED ?

18. As regards the contention urged by the learned Counsel for the petitioners that the law laid down by the learned single Judge in Devji Meghaji vs. Lalmiya, 18 GLR 515 is not a good law, we are not inclined to accept the said contention. In our view the plain language of Section 2(6) of the Act does not leave any room for doubt. The said judgment of the learned single Judge laid down the correct principle. The said judgment has held the field till the deletion of the relevant portion of Section 2(6) of the Act by an express provision made by the Legislature. On the principle of stare decisis also the view expressed by the learned single Judge in Devji Meghaji vs. Lalmiya, 18 GLR 515 does not require to be reconsidered.

WHETHER AMENDMENT IS RETROACTIVE ?

19. The question whether the amendment Act No. 4 of 1995 removing the restriction of 5 miles (8 kms.) distance between the existing agricultural holding and the agricultural land intended to be purchased, has any retroactive operation is certainly an interesting question, but is not required to be decided on the facts and circumstances of the present case as we are inclined to uphold the objection seriously raised by the learned counsel for the purchasers about the delay in filing of the present petitions.

WAS THERE UNREASONABLE DELAY IN FILING OF PETITIONS

20. Apropos the question whether there was unreasonable delay in filing of the present petitions challenging the order of the Tribunal, the purchasers seem to be on firmer ground. The affidavit-in-reply shows that after the judgment of the Tribunal on 13-4-1982 Entry No.3093 was made in the revenue record on 10-8-1992 and the said entry was certified on 4-6-1993 indicating acceptance of the Tribunal's judgment and that the file was closed. The purchasers have stated that it was after certification of the Entry No.3093 indicating finality of the judgment of the Tribunal (i.e. the State Government having accepted the judgment of the Tribunal) that the purchasers had purchased other agricultural lands admeasuring 27 acres 11 gunthas between 10-8-1993 and 27-5-1994. It is therefore, submitted that any interference by this Court at this stage would cause irreparable loss and damage to the purchasers as they had invested, in addition to the purchase consideration, total sum of Rs.1.25 Crores on cultivation and improvement of the said lands. The purchasers introduced drip irrigation system on the said lands. The details of

various expenses are contained in Annexure III and IV to the Affidavit-in-reply. It is further pointed out in the reply affidavit that the purchasers had also taken loans of Rs. 40 lacs and Rs.10 lacs from the Ahmedabad Peoples Cooperative Bank by mortgaging the lands in question and that the loans are still outstanding and the mortgage of the lands still subsists. It is further submitted that the purchasers, apart from investing huge amounts for the improvement of the lands, have tried to invent and adopt latest technology of irrigation so as to improve the said agricultural operations and that putting the clock back at this stage would not only cause irreparable loss to the purchasers but also go against the present policy of the Government declared since 1995 that any person who is agriculturist in Gujarat can purchase agricultural land any where in the State of Gujarat.

21. It appears from the pleadings and material on record produced by respondent no.3 that after the judgment of the Tribunal delivered in April 1992 and particularly after certification of the mutation entry in the revenue record on that basis in June 1993, the purchasers purchased other agricultural lands admeasuring 27 acres 11 gunthas over and above their agricultural holding in dispute, at a cost of Rs. 25 lacs and that they further invested Rs. 31,80,000/- on improvement of the said lands between April 1992 and June 1994. Till then the State Government had not even challenged the impugned judgment of the Tribunal. It was on 27-7-1994 that the State Government filed the present three petitions challenging the judgment of the Tribunal. It is true that the further amount of Rs.70 to 80 lacs appears to have been spent between July, 1994 and March 1997 as per the particulars given in Annexure VI to the affidavit-in-reply dated 7-4-1997 and in principle therefore, the purchasers cannot claim the benefit of this equity arising after July 1994. However, it cannot be overlooked that the subject matter of this litigation is agricultural lands and therefore, upon mere filing of the petition or service of notice thereof the purchasers could not have been expected to keep their hands off the agricultural lands and stop all expenditure thereon. As the Annexure to the affidavit-in-reply indicates, the purchasers have incurred substantial expenditure on drip irrigation, manure, pesticides, seed-sampling, ploughing, land developments, Bore-pumps, interest on loans and other allied activities. The said expenditure and/or investments by the purchasers cannot be said to be irrelevant or non-germane to the question as to whether the discretionary jurisdiction of this Court under Article 226 of the Constitution should be exercised

against the purchasers so as to invalidate all the transactions of purchase of the agricultural lands in July 1981 on the ground that at the time of purchase their agricultural holding was not within 5 miles (8 kms.) from the agricultural lands purchased in July 1981 and therefore, they were not agriculturists within the meaning of Section 2(6) of the Act. It is, therefore, evident that the delay in filing of these petitions by the State Government has resulted into serious prejudice to the purchasers. We are also not inclined to interfere with the order of the Tribunal passed in April, 1992 in Special Civil Application No. 686 of 1994 which was filed in August, 1993, but was not circulated for hearing for issuance of notice till 19-1-1994. The petitioner Union had also allowed the respondent-purchasers to proceed with further expenditures and investments.

CONCLOUSION

22. In view of the fact that we have accepted the contention of the learned Counsel for the purchasers that after the impugned judgment of the Tribunal and before filing of the petitions by the State Government the purchasers had invested an amount of Rs.25 lacs in purchasing other agricultural land and that they further incurred expenses running into Rs,31,00,000 before filing of the petitions by the State Government and that they have in all incurred Rs.1.25 Crores for improving the lands between the date of the impugned judgment of the Tribunal and March 1997, this is a case where this Court would not exercise its discretionary writ jurisdiction and would not interfere with the final order of the Tribunal.

23. In view of the above discussion, while disapproving of the grounds which had appealed to the Tribunal for setting aside the order of the Mamlatdar & ALT under section 84C of the Act, we decline to interfere with the final order passed by the Tribunal and dismiss the petitions.

24. Subject to the above observations, Rule is discharged in each petition with no order as to costs.

Interim relief granted earlier is vacated.

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Sharma